Opening Statement
Senator Ken Salazar
Senate Committee on Environment and Public Works
Wednesday, June 14, 2006 9:30 AM

Thank you, Mr. Chairman and Ranking Member Jeffords. Thank you for agreeing to hold this hearing. I appreciate the opportunity to testify in support of S.1848, the Good Samaritan "Cleanup of Inactive and Abandoned Mines Act," which I introduced with my colleague from Colorado, Senator Allard. And I look forward to working with both of you and with all of the members of this committee to pass this important legislation during this session. I am particularly grateful to Senator Baucus for his prior work in this area and for his support for this bill.

There are some 22,000 inactive and abandoned mine sites in my state that are beyond the reach of the EPA, Superfund, and the State Health Department, not because our pollution laws do not apply to them, but because there is no identifiable owner or operator who is responsible for performing the cleanup and because neither the State nor the federal government has the resources to step in and conduct its own cleanup.

Ironically, the draconian liability schemes under CERCLA and the Clean Water Act deter would-be volunteers, or "Good Samaritans," from getting near those sites for fear of unlimited liability. Even with a solid, sensible plan to clean up a mine site, Good Samaritans assume massive liabilities under the Clean Water Act and CERCLA, in addition to state and local laws. These liabilities dissuade efforts to erase the environmental legacy of hard rock mining.

And so, year after year, over half a million mine sites across the country stand idle, awaiting cleanup as lead, cadmium, mercury, copper, arsenic and zinc seep into our watersheds; as mine tailings blow in the wind and taint our air and soil; as acidic compounds leach into the water, killing fish and aquatic life and polluting our drinking water.

The continued pollution from these sites and the barriers discouraging Good Samaritans from helping with cleanups is one of the most frustrating realities of cleaning up abandoned mine sites.

When I was the head of the Colorado Department of Natural Resources and Colorado's Attorney General, I was anxious for state and federal legislators to pass laws that would allow Good Samaritans to conduct these mine cleanups. Over the past several years, Congress has considered a number of Good Samaritan proposals – some to amend the Clean Water Act and CERCLA, some to create financial incentives for mining companies to act as Good Samaritans, some with extensive liability protection, and some with more limited liability protection. I was disappointed that Congress didn't pass a comprehensive Good Sam bill at that time, because many of these proposals, including bills of Senator Baucus, Senator Reid, and Senator Campbell would have yielded good results. But I also thought there should be a more straightforward way of providing Good Samaritans the liability protection they need to conduct these cleanups.

The goal of Good Samaritan legislation is simple: we want to make it easier for Good Samaritans to clean up inactive and abandoned mine sites when a cleanup by the liable party is otherwise very unlikely. This is a pragmatic objective, which recognizes that making the environment cleaner, especially when a Superfund-quality remediation is not possible and not necessary, is better than doing nothing. As is often said, the perfect should not be the enemy of the good.

Because the goal of Good Sam legislation is simple and pragmatic, the means to achieve that goal should be simple and pragmatic, not legalistic or bureaucratic.

So how do we do this? How do we create a permitting process for Good Samaritan mine cleanups that is straightforward yet thorough, simple yet rigorous?

In my experience with water deals, public lands issues, and disputes over natural resources, I have found that the best results are achieved when all stakeholders agree on the scope of a project before the project begins. This consensus-based approach reduces bureaucracy, limits the potential for conflict, and ensures transparency.

I have written this bill based on my experiences with consensus-building. Under this bill, a Good Samaritan applies for a permit from the EPA. It is a technically-based permit application that depends on a sound work plan and achievable results. In order to receive the permit for the project, local, state, and federal authorities must all agree that the overall environmental improvement will be significant, that there is no environmental degradation – at the project or anywhere else – and that the project is technically sound.

If the state or the local communities whose laws are affected do not agree with the proposed cleanup plan, they simply refuse to sign the permit and the project does not go forward. But if they think the cleanup plan is sound, they determine the scope of liability protection afforded under the permit.

While some bills offer blanket liability protection from environmental laws for all Good Samaritans, this bill provides that the liability protections should be crafted on a case-by-case basis. The local and state governments can create liability protections from their laws, and the EPA can offer limited or extensive liability protection under the Clean Water Act and CERCLA or other relevant statutes. Presumably, each project is unique, so the liability protections afforded under each permit should be designed to fit the project.

The permit process is entirely open to the public at every step of the way. The EPA must give public notice of the permit application, hold a hearing, consider public comment, and make public all records in the permit process.

Only after the public has weighed in and the stakeholders have agreed that the project will result in an overall improvement to the environment, the EPA issues the permit. In the permit, the applicant lays out a clear, concrete list of liability protections as well as the terms and conditions of cleanup that must be satisfied in order to benefit from those protections. That's it – one permit, issued after extensive public input and the consensus of all stakeholders.

This pragmatic, simple approach not only reduces bureaucracy, but it strikes a careful balance that protects Good Samaritans from liability without creating an end-run around environmental laws.

Let me emphasize that last point: This bill, like the administration bill, makes clear that a party that is liable for the cleanup under any applicable federal, state or local law is not eligible for a Good Samaritan permit. Furthermore, this bill makes clear that only the activities necessary for the cleanup are authorized under a Good Samaritan permit. Any new mining activities at the site would require a mining permit and must be performed in accordance with otherwise applicable environmental laws. It is certainly not my intention or the intention of the co-sponsors of this legislation to enable polluters to escape liability through a Good Samaritan permit, directly or indirectly, nor is it our intention to authorize mining or "remining" operations without the necessary mining permit and in compliance with all applicable laws. This bill recognizes those distinctions and draws those lines clearly.

Just as we should facilitate Good Samaritan cleanups where there is no identifiable liable party, we should enable volunteers to clean up abandoned mine sites where the person who may be responsible for the mine residue does not have the financial resources to pay for the cleanup. In that case, it is more important to clean up the site than it is to point fingers.

Based on my experience, we should also allow a range of stakeholders to apply for permits. Given the safeguards in the bill, there is no good policy reason to limit Good Samaritan permits to local or state governments when so many capable non-profit organizations, individuals, and businesses are willing and able to make significant improvements at these sites.

Importantly, this bill would not disqualify a company or individual from capturing and retaining whatever ore values may exist in abandoned tailings piles or other mine residue. If the technologies available today enable a company to reprocess mine tailings and recover valuable minerals that could not be recovered more than 100 years ago – when many of these mines sites were last active – then it should be permitted to retain those mineral values as a modest incentive for performing the cleanup and to offset its costs.

Mr. Chairman, this bill reflects a balanced and pragmatic approach to solving a vexing problem. It creates an open and straightforward process that is neither bureaucratic nor unduly legalistic, but that is based on consensus and a sound, technically-based work plan. As I said earlier, in my experience the best solutions come not through subpoenas or paperwork, but at a conference table, with people of good will in open discussion, finding common ground.

Passing this bill would be a great step forward for Colorado and Western states. For too long we in the West have been frustrated by the legacy of mining, stymied by liability schemes that focus primarily on who is responsible for what, rather than on developing a practical solution to the problem. The truth is that because we have all benefited, and continue to benefit, from resource extraction, we share a responsibility for cleaning up our land and our water. In the end, we will be judged not by who we find liable to clean these sites, but by whether we get them cleaned up for our children and our grandchildren.

Mr. Chairman, I want to thank you again for holding this hearing today and for inviting me to testify. I very much look forward to working with you and the Committee to pass this Good Samaritan legislation, which is of such importance to the land, water, and people of Colorado and the Nation.

Thank you.